

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

December 11, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Consent to Subleases, Harbor Lease No. H-82-4, GKM, Inc., a Hawaii Corporation, Lessee, Honokohau Boat Harbor, Kealakehe, Kailua-Kona, Hawaii, Tax Map Key: (3) 7-04-008:42.

APPLICANT:

GKM, Inc., a Hawaii corporation, dba Gentry's Kona Marina, located at 74-425 Kealakehe Parkway, Kealakehe, Honokohau, North Kona, Hawaii, 96740, Lessee, as Sublessor, to the following Sublessees:

<u>Space No.</u>	<u>Name of Sublessee</u>	<u>Date of Sublease</u>	<u>Original Consent</u>
a. No. 3B	Pacific Boats & Yachts, LLC	September 1, 2009	Yes
b. No. 7	Kona Coast Marine, Inc.	September 1, 2009	Yes
c. No. 17	BMFM Corp.	April 1, 2009	No

LEGAL REFERENCE:

Section 171-36(a)(6), (b) Hawaii Revised Statutes, as amended.

LEASE LOCATION AND AREA:

The premises containing fast and submerged lands in the Honokohau Boat Harbor, Kona, Hawaii, TMK (3) 7-4-008:42, comprising an area of 177,860 square feet or 4.083 acres.

Item J-4

SUBLEASE LOCATION AND AREA:

- a. Pacific Boats & Yachts, LLC
Location: No. 3B
Area: Approximately 576 square feet, more or less.
- b. Kona Coast Marine Inc.
Location: No. 8b
Area: Approximately 1,120 square feet, more or less.
- c. BMFM, Corp.
Location: No. 17
Area: Approximately 1,128 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.
OHA 20% Entitlement
YES X NO

LEASE CHARACTER OF USE:

The lease, relative to "use", reads in its entirety:

"... [F]or the construction of certain improvements which shall be used principally for marine or marine-related activities which shall include the following:

Sales:

- 1. Marine hardware and supplies
- 2. Marine paints and other finish material

Services:

- 1. The construction, operation and maintenance of a boat haul-out facility for boat repair and storage
- 2. Repair facility for the maintenance and repair of boats

3. Marine workshop facilities
4. Rigging and swaging for vessels
5. Administrative offices for boat repair and storage facilities
6. The submerged land shall be used exclusively for the berthing of vessels for servicing and repair and the adjacent land area for use as a work dock area

The Lessee is advised that the Lessor intends to authorize by separate lease the operation of a full fledged restaurant within the boundaries of the Honokohau Boat Harbor.

The following additional marine-related activities may also be conducted within the demised premises upon prior written approval by the Lessor:

Sales:

1. Sailboats and power boats and other water craft (new and brokerage)
2. Charts, maps and nautical publications
3. Navigation instruments and supplies
4. Marine electrical and electronic gear and radios
5. Fishing tackle, lures, ice and fresh bait
6. Outboard and inboard engines and supplies .

Services:

1. Sail making, canvas goods and repair
2. Repair and maintenance of marine electrical and electronic equipment

3. Marine surveys
4. The construction, operation and maintenance of vessels and marine equipment storage facilities
5. Scuba/skin diving services associated with marine repair and salvage
6. Repair and maintenance of marine instruments and navigation equipment
7. Marine upholstery, draperies and interior finishes
8. Repair facility for the maintenance and repair of boats
9. Cold storage facility or ice house
10. Vending machines for the sale of sandwiches, snacks, hot and cold drinks, candies, cigarettes, etc.
11. Other related activities as approved in writing by the Lessor

The Lessee is made aware that the Lessor does not guarantee that the additional permitted activities listed above shall be for the exclusive use of the Lessee within the boundaries of the Honokohau Boat Harbor.

SUBLEASE CHARACTER OF USE:

- a. Pacific Boats and Yachts, LLC: Sales and brokerage of new and used pleasure and commercial boats. Sales and brokerage of boating-related corporations. Ocean recreation business consulting. Vessel management services. Sales are limited to complete boats. Sales of boat engines, hardware, or any other parts that attach to a boat will not be permitted.

- b. Kona Coast Marine, Inc.: Sales of outboard and inboard marine engines and sales of marine engine parts and accessories and repair of marine engines and equipment. Sales of boat trailers and trailer parts.
- c. BMFM, Corp.: Wholesale and retail sale of fresh, frozen, packaged fish and seafood.

TERM OF LEASE:

The lease was originally for Thirty-five (35) years, commencing on April 1, 1984 and expiring on March 31, 2019. On March 24, 2006 the Board approved the extension of Harbor Lease No. H-82-4 for an additional Twenty (20) years, from April 1, 2019 to March 31, 2039.

TERM OF SUBLEASE:

- a. Pacific Boats and Yachts, LLC:
The "commencement date" of the term is September 1, 2009.
The "termination date" of the term is August 30, 2014.
- b. Kona Coast Marine, Inc.:
The "commencement date" of the term is August 1, 2006.
The "termination date" of the term is July 31, 2011.
- c. BMFM, Corp.:
The "commencement date" of the term is April 1, 2009.
The "termination date" of the term is March 31, 2014.

ANNUAL RENTAL:

Currently \$70,500 per annum, payable \$17,625 quarterly. GKM, Inc. normally pays in advance prior to the first day of each quarter and current at this time. The most recent reopening scheduled on April 1, 2009 and pending at this time.

SUBLEASE RENTAL:

a. Pacific Boats and Yachts, LLC:

"A. As of the commencement date, the monthly base rent is \$957.00 per month.

B. Commencing on April 1, 2010 (or such other date as may be agreed upon by Lessor and Lessee) and on the same day of each calendar year thereafter during the remainder of the term of this lease (the "adjustment date"), the monthly base rent shall be increased by an amount equal to the increase in the Consumer Price Index for the twelve (12)-month period immediately preceding the adjustment date. The adjusted monthly base rent shall become the monthly base rent for the next twelve (12) following-month period. The Consumer Price Index hereinabove referred to is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, Honolulu, Hawaii, All Items--Series A. Should the Bureau discontinue publication of its Consumer Price Index, then the computation of the adjustment of the monthly base rent during each period shall be based upon the index the Bureau designates as providing the most accurate comparison with consumer prices for each period of the term of this lease, provided, however, that the adjusted monthly base rent shall in no case be less than the monthly base rent during the month immediately preceding the adjustment date."

b. Kona Coast Marine, Inc.:

"A. As of the commencement date, the monthly base rent is \$940.00 per month.

B. Commencing on August 1, 2007 (or such other date as may be agreed upon by Lessor and Lessee) and on the same day of each calendar year thereafter during the remainder of the term of this lease (the "adjustment date"), the monthly base rent shall be increased by an amount equal to the increase in the Consumer Price Index for the twelve (12)-month period immediately preceding the adjustment date. The adjusted monthly base rent shall become the monthly base rent for the next twelve (12) following-month period. The Consumer Price Index hereinabove referred to is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, Honolulu, Hawaii. All Items--Series A. Should the Bureau discontinue publication of its

Consumer Price Index, then the computation of the adjustment of the monthly base rent during each period shall be based upon the index the Bureau designates as providing the most accurate comparison with consumer prices for each period of the term of this lease, provided, however, that the adjusted monthly base rent shall in no case be less than the monthly base rent during the month immediately preceding the adjustment date."

c.. BMFM, Corp.:

- "A. As of the commencement date, the monthly base rent is \$2407.00 per month.
- B. Commencing on April 1, 2010 (or such other date as may be agreed upon by Lessor and Lessee) and on the same day of each calendar year thereafter during the remainder of the term of this lease (the "adjustment date"), the monthly base rent shall be increased by an amount equal to the increase in the Consumer Price Index for the twelve (12)-month period immediately preceding the adjustment date. The adjusted monthly base rent shall become the monthly base rent for the next twelve (12) following-month period. The Consumer Price Index hereinabove referred to is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, Honolulu, Hawaii, All Items--Series A. Should the Bureau discontinue publication of its Consumer Price Index, then the computation of the adjustment of the monthly base rent during each period shall be based upon the index the Bureau designates as providing the most accurate comparison with consumer prices for each period of the term of this lease, provided, however, that the adjusted monthly base rent shall in no case be less than the monthly base rent during the month immediately preceding the adjustment date."

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None. The sublease rent participation policy, approved by the Board on May 26, 2000, Item D-24, and amended January 26, 2001, Item D-8, is as follows:

The lessee is paying fair market rent and is only subleasing improvements that are not owned by the State pursuant to paragraph 1.c. of the policy. According to the policy, the "Board shall not receive any portion of sublease rents from subleasing improved space unless that right and method of calculation are specifically stated in the lease".

GKM, Inc. is proposing to sublease improved space. No method of calculation for sublease rent participation is stated in the lease. Therefore, there is no recommended adjustment to the lease rental.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

SUBLESSEE:

- | | | | |
|----|---|--------------|--------------|
| a. | Pacific Boats and Yachts, LLC: | | |
| | Place of business registration confirmed: | YES <u>X</u> | NO <u> </u> |
| | Registered business name confirmed: | YES <u>X</u> | NO <u> </u> |
| | Good standing confirmed: | YES <u>X</u> | NO <u> </u> |
| b. | Kona Coast Marine, Inc.: | | |
| | Place of business registration confirmed: | YES <u>X</u> | NO <u> </u> |
| | Registered business name confirmed: | YES <u>X</u> | NO <u> </u> |
| | Good standing confirmed: | YES <u>X</u> | NO <u> </u> |
| c. | BMFM, Corp.: | | |
| | Place of business registration confirmed: | YES <u>X</u> | NO <u> </u> |
| | Registered business name confirmed: | YES <u>X</u> | NO <u> </u> |
| | Good standing confirmed: | YES <u>X</u> | NO <u> </u> |

REMARKS:

The subletting provision provides:

"Subletting. That the LESSEE shall not rent or sublet the whole or any portion of the demised premises, without written approval of the Director and the Board pursuant to Section 171-11 and 171-36(a)(6). The Director shall have the right to deny uses contrary to the primary purpose of the lease. The Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the proposed

sublessee by the LESSEE; provided, further, that the rent may not be revised downward."

Pacific Boats and Yachts, LLC and Kona Coast Marine, Inc. have received previous consents in the past and are in need of update of consents. BMFM, Inc is a new Sublessee replacing a similar type of operation formally Marina Seafood at the same location as a wholesale-retail of seafood business. At present there is no establishment located within Honokohau Harbor that operates a wholesale-retail of seafood business, or seafood exclusive restaurant. The Sublessee wishes to compliment its operation to expand to include a sit down and/or take-out service providing a menu exclusively of seafood items as well as the sale of beer and wine. Currently the Harbor House an approved sublessee of GKM, Inc, is the only restraunt/bar in the harbor and only serves hamburgers and draft beer.

The Division of Boating and Recreation has reviewed the use clause of the proposed sublessee and believes that it may be considered marine or marine-related. GKM, Inc. is fully compliant with all rent and insurance requirements under Harbor Lease No. H-82-4.

The Division recommends approval to update the Subleases to Pacific Boats and Yachts, LLC, and Kona Coast Marine, Inc. and approval of BMFM, Corp as sublease for a Wholesale-retail seafood operation, with the restaurant/bar component, serving no more than seafood, and only bottled or canned beer and wine. The sublessee must comply with all federal, state, and county requirements pertaining to this type of business.

RECOMMENDATION:

That the Board consent to the subject subleases, as submitted under Harbor Lease No. H-82-4 between GKM, Inc., as Sublessor, and to those Sublessees, as noted:

<u>Space No.</u>	<u>Name of Sublessee</u>
a. No. 3B	Pacific Boats & Yachts, LLC
b. No. 7	Kona Coast Marine, Inc.
c. No. 17	BMFM Corp.

Subject to the following terms and conditions:

1. Any amendment to the Sublease must be approved in writing by the Chairperson;

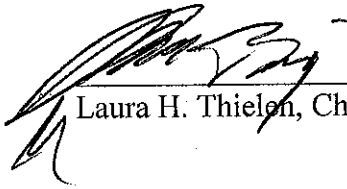
2. Sublessee must comply with all Federal, State, and County requirements;
3. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Edward R. Underwood, Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielon, Chairperson

PREMISES AND PROPERTY

